

(c) If you went to trial, what kind of trial did you have? (Check one)

~~Jury~~ ☐ ~~Judge only~~ ☒

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☒ No ☐ plea withdrawal hearing

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: NYS Appellate Div. 2nd Dept.

(b) Docket or case number (if you know): u/k

(c) Result: Affirmed

(d) Date of result (if you know): 6/5/95

(e) Citation to the case (if you know): 216 AD 2d 330 (2nd Dept 1995)

(f) Grounds raised: Trial court's abuse of discretion -
Excessive Sentence / (Pro se) ineffective
assistance of counsel

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: NYS court of Appeals 2nd Dept.

(2) Docket or case number (if you know): u/k

(3) Result: Denied entry

(4) Date of result (if you know): u/k 8/16/95

(5) Citation to the case (if you know): u/k 86 NY 2d 798

(6) Grounds raised: Same as direct appeal

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: N/A

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Kings County Supreme

(2) Docket or case number (if you know): 4/14 7901/92

(3) Date of filing (if you know): 6/7/96

(4) Nature of the proceeding: error coram nobis

(5) Grounds raised: Ineffective assistance of appellate counsel for failing to raise valid issue of ineffective assistance of trial counsel as the trial court's records reflect counsel's failure to investigate and secure testimony of defense witnesses he acknowledge at the time petitioner moved to withdraw the guilty plea.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: 9/16/96 Denied

(8) Date of result (if you know): 9/16/96

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Kings County Supreme

(2) Docket or case number (if you know): 7901/92

(3) Date of filing (if you know): 1/26/98

(4) Nature of the proceeding: CPL § 440.10

(5) Grounds raised: Ineffective assistance of initial and replacement trial counsel and statements made at the plea was used against ~~the~~ petitioner at the plea withdrawal hearing in violation of the Fifth Amendment right and plea unconscionably obtained as made involuntarily

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): 9/22/98

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: U.S. District Court, Eastern District

(2) Docket or case number (if you know): 00-CV-1992

(3) Date of filing (if you know): 4/3/00

(4) Nature of the proceeding: Federal habeas corpus

(5) Grounds raised: State court abuse of discretion, ineffective assistance of both trial court counsel and appellate counsel and plea entered into unknowingly -

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: Dismissed (time barred)

(8) Date of result (if you know): 1/16/02

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☒ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

cont. on next page/ GROUND ONE: Petitioner's incarceration is a "Fundamental miscarriage of Justice" (see cont'd. page 6) →

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner plead guilty with the understanding that, the Court's imposed minimum of 8 and 1/3 yrs. incarceration was due to the "Nature" of the crime. However, after successfully completing the minimum, he has come to learn that the Division of Parole has such broad discretion over the [MPI]. It can deny him release, when he (next page) -

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Issue Not ripe for Appellate review

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: CPL § 440.10 (1)(b)

Name and location of the court where the motion or petition was filed: Biagg Court Supreme Court

Docket or case number (if you know): 7801/82

Date of the court's decision: 12/29/03

Ground one:

Due to the trial court's failure to inform him of all "direct" consequences of the plea. 28 USC § 2244(b), (B), (i), (ii).

Supporting Facts:

meets statutory requirements to be release on to parole on base its determination on the same factors considered by the court when it imposed the original minimum sentence. Pleading guilty unknowingly of such likely punitive consequences, clearly violates petitioner's constitutional rights to be afforded due process and equal protection of the law. Which renders his present incarceration a "Fundamental miscarriage of Justice", because as a first time felony offender. He received the largest minimum period of incarceration allowable by legislative prescription when sentence by the court. The broad discretion of the Division of parole not only infringes on the plea agreement for sentencing concession, but has altered his conviction. Petitioner was convicted of manslaughter, but now is serving time for murder. Under these circumstances for which his conviction rests, no reasonable juror would have found him eligible for the enhancement of the [MPI].

Result (attach a copy of the court's opinion or order, if available): Denied see.
Court's opinion attached hereto

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: NY Appellate Div. 2nd
Dept. 45 Monroe Pl. Bklyn 11201

Docket or case number (if you know): 2004-5965

Date of the court's decision: 10/25/04

Result (attach a copy of the court's opinion or order, if available): Denied entry
See Court's order attached hereto

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: 2294(b) motion:

Successive petition filed in U.S.C.A. And
Transferred back to District Court

GROUND TWO:

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

N/A

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

N/A

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

N/A

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

N/A

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

N/A

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

N/A

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. U.S. District court

Eastern District NY 225 Cadogan Plaza East
Bklyn, 11201 Successive habeas corpus (involun-
tary guilty plea / USCA 2nd Cir 40 Foley sq. NY
on May 17, 05 transferred 2254 petition back
to District court for further proceedings on
7/11/05

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

_____ N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

_____ N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This petition is permitted upon the "Miscarriage of Justice" ground for the purpose of addressing bar to reaching the merits of this § 2254 application. See, USC § 2244(b), (A), (B)(I), (ii); that is petitioner's incarceration is a fundamental miscarriage of justice as a consequence of him pleading guilty "unknowingly" of all "Direct" consequences of the plea. Due to the court's failure to inform him of such. In an extraordinary case where a constitutional violation has probably resulted in the conviction of one who is actually innocent of the conduct for which his sentence is based. A writ of habeas may be granted even in the absence of a showing of cause for procedural default. The miscarriage of justice exception is concerned with actual as compared to legal innocence.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

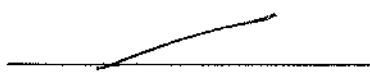
(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: vacate Judgment
Ordering petitioner's immediate release
From the States custody.


or any other relief to which petitioner may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____
JAN. 12, 2006 (month, date, year).

Executed (signed) on JAN. 12, 2006 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

N/A